

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
DEC 13 2007

[Signature]
CLERK

RANCHERS CATTLEMEN ACTION
LEGAL FUND; UNITED
STOCKGROWERS OF AMERICA;
HERMAN R. SCHUMACHER;
ROBERT P. MACK; ERNIE J. MERTZ;
WAYNE J. NELSON; SOUTH DAKOTA
STOCKGROWERS ASSOCIATION;
CENTER FOR FOOD SAFETY;
CONSUMER FEDERATION OF
AMERICA; CREUTZFELDT-JAKOB
DISEASE FOUNDATION, INC.;
FOOD & WATER WATCH; and
PUBLIC CITIZEN,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE; ANIMAL AND PLANT
HEALTH INSPECTION SERVICE;
CHARLES F. CONNER, in his capacity as
the Acting Secretary of Agriculture,

Defendants.

CIV 07-1023

ORDER

On December 10, 2007, this case was transferred from Judge Charles B. Kornmann to Judge Lawrence L. Piersol. Judge Piersol has briefly reviewed the docket report, most of the pleadings and has read the related cases heard by Judge Cebull and the Ninth Circuit. It appears to the Court that the parties are now focusing on the Motion for Preliminary Injunction since no hearing was held on the Motion for Temporary Restraining Order and the regulation at issue apparently went into effect on November 19, 2007.

Plaintiffs have filed a motion for enlargement of time to file a reply brief in support of their motion for preliminary injunction. Plaintiffs state that Defendants have consented to such an extension, and the motion will be granted. In addition, Defendants have filed a motion for an extension of time to file an answer to the complaint, indicating that Plaintiffs do not oppose the motion. The Court will extend the time for filing Defendants' answer until 30 days following the Court's decision on the Plaintiffs' Motion for Preliminary Injunction or the decision on cross-motions for summary judgment, whichever first occurs.

The parties shall advise the Court when they will be prepared for a hearing on the Motion for Preliminary Injunction. The parties shall also advise the Court how much time they estimate the hearing will take. If instead of a preliminary injunction hearing the parties agree to proceed by cross-motions for summary judgment, the parties should promptly advise the Court of that agreement. All hearings in this case will be held in the courtroom for the United States District Court, District of South Dakota, in Sioux Falls, South Dakota. The case will, however, remain as a Northern Division case.

The parties should be aware that Judge Piersol, in February of 1992, joined the South Dakota Stockgrowers Association by paying for a three year membership. The reason for his membership in the association was that, several years earlier, Judge Piersol and a partner purchased a cattle and sheep ranch northwest of Belle Fourche in Butte County, South Dakota. The ranch was always leased to another operator and then it was sold to the lessee in September 1993. Judge Piersol never served in any capacity other than simply becoming a member of the South Dakota Stockgrowers Association. This was while Judge Piersol was still a trial lawyer and before he became a Judge in December 1993.


Some of the pending motions will be ruled on in this Order. The remaining motions shall be briefed in accordance with the usual briefing schedule as set forth in Local Rule 7.2(A) of the Local Rules of Practice of the United States District Court, District of South Dakota. Accordingly,

IT IS ORDERED:

1. That Plaintiffs' Motion for Leave to File Excess Pages (Doc. 18) is granted;
2. That the Motion to Establish Time for Response to Motion for Preliminary Injunction (Doc. 19) is denied as moot;
3. That the Motion for Enlargement of Time to Reply in Support of Motion for Preliminary Injunction (Doc. 58) is granted, and Plaintiffs deadline to file a reply memorandum is extended until January 9, 2008;
4. That Defendants' Unopposed Motion to Extend the Time to File Their Answer (Doc. 61) is granted to the extent that Defendants shall file their answer 30 days following the Court's decision on the Plaintiffs' Motion for Preliminary Injunction or on the cross-motions for summary judgment, whichever first occurs;
5. That, on or before January 10, 2008, the parties shall advise the Court whether or not the Motion for Temporary Restraining Order (Doc. 28) can be denied as moot;
6. That, on or before January 10, 2008, the parties shall advise the Court of the date by which they will be prepared for a hearing on the Motion for Preliminary Injunction or a hearing on cross-motions for summary judgment. The parties shall also advise the Court how much time they estimate the hearing will take;
7. That all hearings in this case will be held in the courtroom for the United States District Court, District of South Dakota, in Sioux Falls, South Dakota.

Dated this 13th day of December, 2007.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 

DEPUTY